U. S. Customs Service
Office of Strategic Trade
Regulatory Audit Division

Risk Opinion under Focused Assessments

Introduction

Prior to the implementation of the Customs-Trade Partnership Against Terrorism (C-TPAT) on April 16, 2002, the results of Compliance Assessments and Focused Assessments were used by Customs to assist in determining the level of cargo examinations of imports. Results of Compliance Assessments and Focused Assessments will no longer determine the level of cargo examinations. Accordingly, the FA team will not issue an opinion that will be used by Customs to place a company in a Compliance Risk Category. The Focused Assessment (FA) will develop a risk opinion, which will state whether imports by the company are an acceptable or unacceptable risk to Customs. If a company has unacceptable risk to Customs, the company can implement a Compliance Improvement Plan (CIP) to improve their risk.

This document provides guidance to Regulatory Audit field offices concerning the development of an opinion on risk. The acceptability of a company's risk to Customs in an FA is based on a review of the company's internal control procedures and, if necessary, substantive testing to determine a compliance rate. The review provides Customs with valuable information about the way the company manages its Customs risk.

This document does not consider or elaborate on specific FA issues such as whether testing is necessary to quantify the loss of revenue. All errors, discrepancies, or loss of revenue detected during an FA may be subject to review and possible referral for action under Customs laws.

Procedures

Risk Opinion

The FA team will develop a risk opinion on each area reviewed during the FA and will state in FA reports whether risk is acceptable or unacceptable for each review area. By stating a risk opinion by review area, the risk is clearly identified as acceptable or unacceptable in the company's various areas of Customs operations and the materiality of risk is clearer.

During the Pre-Assessment Survey (PAS) part of the FA program, the FA team attempts to evaluate the adequacy of internal controls for each review area with limited testing. If the volume of transactions is extremely high or if for some other reason, it is not possible to determine if risk for a review area is acceptable in the PAS, the FA team may have to proceed to Assessment Compliance Testing (ACT) to determine a compliance rate for the review area. If ACT is necessary, Appendix 1 illustrates the use of a compliance rate for review areas to determine if risk is acceptable. If ACT testing reveals that a company meets an acceptable rate of compliance in all review areas, the FA team should conclude that the company's risk is acceptable to Customs.

Opinion Issued during the PAS Process

Adequate Internal Controls and Acceptable Risk

During the PAS, the FA team will evaluate the risk to Customs that a company's importing process may result in significant noncompliance with Customs laws and regulations. If importing procedures and controls are found to be documented and adequate, and no unacceptable risks or deficiencies are identified, then the FA team will express an opinion that the company's imports are an acceptable risk to Customs because it has adequate internal controls over Customs operations.

Inadequate Internal Controls with Compliance Improvement Plan

If unacceptable risks or deficiencies are identified in PAS because importing procedures and controls are not adequate, the company may elect to prepare a Compliance Improvement Plan (CIP) to improve its internal controls and reduce the risk to Customs. If the company elects to use this plan, it has a conditional period of six months from the date of the audit report to implement the CIP. Although the CIP indicates the intent of the company to improve internal controls, unacceptable risks will not be eliminated until the CIP has been implemented and is effective. Accordingly, even if the company agrees to implement a CIP, the FA team will issue a report expressing an opinion that the company's imports are an unacceptable risk to Customs in the area(s) identified with inadequate internal controls. Facts about the company's decision to implement the CIP will be clearly reported and the report will state that a follow-up review will be made to determine if internal controls are improved to an acceptable level.

Inadequate Internal Controls without Compliance Improvement Plan

If inadequate internal controls are identified in PAS and the company does not agree to prepare a CIP to improve its internal controls, the FA team will probably proceed to ACT to determine the extent of compliance. If the company agrees to quantify or if the team can readily quantify the risk, the team will not have to proceed to ACT. The PAS report will explain that the FA team believes that the company's internal controls of the risk area are not adequate but the company has not agreed to implement corrections; so the team must proceed to ACT to calculate a compliance rate to determine the extent of compliance.

Adequacy of Internal Controls not Known

If PAS does not provide adequate information to determine whether the company has adequate internal controls to provide reasonable assurance that they will meet an acceptable level of compliance for a review area, the FA team cannot express an opinion on the acceptability of risk for the review area. The FA team will have to proceed to ACT or take other action to determine the extent of compliance. The PAS report should explain that the FA team could not determine if internal controls are adequate in the PAS process and explain what action will be taken.

Opinion Issued during the ACT Process

During the ACT process, the company's extent of compliance will be determined by testing of areas found to have identified risk. The company's extent of compliance will be part of the basis for a risk opinion for the review area.

Acceptable Level of Compliance

If the company meets an acceptable level of compliance in a review area, the FA team may express an opinion that the company's imports are an acceptable risk to Customs in the review area because the company met an acceptable level of compliance for the area. If the FA team identified significant weaknesses in internal controls that need to be corrected even though the company met an acceptable compliance rate, the team should include a statement after the risk opinion in the Executive Digest that internal controls should be instituted to address the risks as an element of reasonable care.

Unacceptable Level of Compliance with Compliance Improvement Plan

If the company does not meet an acceptable level of compliance in the ACT process, the company may elect to prepare a CIP to improve its internal controls and reduce its risk to Customs. If the company elects to implement a CIP, it has a conditional period of six months from the date of the audit report to implement the CIP. Although the CIP indicates the intent of the company to improve internal controls, unacceptable risks will not be eliminated until the CIP has been implemented and is effective. Accordingly, even if the company agrees to implement a CIP, the FA team will issue an opinion that the company's imports are an unacceptable risk to Customs in the area(s) identified with inadequate internal controls. Facts about the company's decision to implement the CIP will be clearly reported and the report will state that a follow-up review will be made to determine if internal controls improved to an acceptable level.

Unacceptable Level of Compliance without Compliance Improvement Plan

If the company does not meet an acceptable level of compliance in the ACT process and does not elect to prepare a CIP to improve its internal controls and reduce the risk to Customs, the FA team will issue an opinion that the company's imports are an unacceptable risk to Customs in the area(s) identified with an unacceptable rate of compliance. The ACT report will explain that the company has not agreed to implement corrections and the report will be issued to headquarters requesting guidance for trade enforcement action.

Opinion Issued During the Follow-up Process

At the conclusion of a follow-up, the FA team will express an opinion on whether the company's imports should be considered acceptable or unacceptable risk.

If the company has implemented internal controls and taken adequate corrective action, the FA team can issue an opinion that the company's imports should be considered an acceptable risk.

If the company has implemented some internal controls and is obviously making a good faith effort to improve compliance but has not implemented adequate corrective action, Customs may allow another conditional period to implement more corrective action before taking any trade enforcement action. Field Directors should not allow more than one extension (two opportunities) to a company to implement corrective action without obtaining approval from headquarters.

The FA team should issue an opinion that the company's imports are an unacceptable risk in the review areas covered by the CIP if:

- The company does not agree to a follow-up after the conditional period has expired,

- The CIP was not implemented, or
- The follow-up reveals that the company is not working to improve internal controls.

The report should explain that the company has not complied with the terms of the CIP and provide detailed information supporting the statement. The report will be issued to headquarters requesting guidance for trade enforcement action.

Guidelines for ACT for Determining Acceptable Level of Compliance (See Appendix 1)

During ACT, the FA team uses the guidelines below and in Appendix 1 to determine the level of compliance. For each area tested, systemic errors are included in the computation of the compliance rate/amount, but nonsystemic errors are not included in the computation of the compliance rate and/or materiality criteria. See Appendix 2 for an explanation of systemic errors.

Compliance Rate for Classification and Classification-Related Areas

The value of the materially misclassified items (systemic classification errors at the 8th digit level, plus systemic errors at the 9th or 10th digit that affect duty or admissibility) will be considered errors for purposes of compliance calculations. When samples are used, compliance should be based on manual ratios/projections appropriate for the type of sampling performed. If the compliance rate is greater than or equal to 99 percent, the company is considered to have met an acceptable level of compliance.

Compliance Rate/Amount for Transaction Value

The absolute value of all systemic value errors is calculated to determine the overall value discrepancy amount. When samples are used, manual ratios/projections appropriate for the type of sampling performed should be used. Compliance in value is not acceptable if the overall value discrepancy amount is greater than $10,000,000 or greater than 1 percent of entered value, whichever is less.

Compliance Rate for Other Areas

Compliance for most test areas will be evaluated based on value. These test areas include Harmonized Trade Schedule (HTS) chapter 98; quota merchandise in bonded warehouse; Foreign Trade Zone (06 Entries); trade agreements (Generalized System of Preferences (GSP), Caribbean Basin Initiative (CBI), etc.); declared Anti-Dumping Duties (ADD); declared Countervailing Duties (CVD);and computed value. When sampling is used, compliance should be based on manual ratios/projections appropriate for the type of sampling performed. If the compliance rate is greater than or equal to 99 percent, the company is considered to have met an acceptable level of compliance.

Undeclared ADD/CVD and transshipment are areas of high risk to Customs. Because of their sensitivity and the obvious difficulty of establishing a universe for these areas, no compliance rate will be calculated. All systemic errors (undeclared ADD/CVD or transshipment) are material.

Corrective Action during the FA

In some cases, the company may take action to correct noncompliance and internal controls before completion of the focused assessment. The corrective actions may have been taken to correct internal controls and noncompliance identified by the company and disclosed to Customs or identified by the FA team. In either case, if the company has corrected the underlying cause of the noncompliance, and the FA team has validated the improvements during the FA, the improvements should be considered the same way an implemented and validated CIP would be considered when determining whether internal controls are adequate. The FA should clearly report that the company improved their internal controls and issue an opinion that the company is acceptable risk in the corrected area. The FA should not be unnecessarily delayed to wait for a fully implemented CIP.

ACCEPTABILITY OF COMPLIANCE RATE

Review Area	Compliance Calculation	Compliance	
		Rate	Result
Classification Additional Sampling Issues (Classification Related)	The value of materially misclassified items (systemic errors at the 8th digit level plus systemic errors in the 9th or 10th digit that affect duty or admissibility) cannot exceed 1 percent of the merchandise value tested. The compliance rate percentage is calculated as follows: 100 percent minus the percentage of material dollars misclassified.	Dollars Compliant ≥ 99%	Compliance Acceptable
		Dollars Compliant < 99%	Compliance Unacceptable
Transaction Value (This is an Overall Value Discrepancy Test. This test will include the absolute amount of all value variances occurring during the fiscal year reviewed.)	The absolute value of all value variances resulting from systemic errors cannot exceed 1 percent of the entered value or $10,000,000, whichever is less, for the period under review. The 1 percent or $10,000,000 is a test for all of transaction value, not for a smaller review area such as research and development or assists.	Value Variances ≤ $10,000,000 or ≤ 1%	Compliance Acceptable
		Value Variances > $10,000,000 or > 1%	Compliance Unacceptable
Chapter 98 Quota Merchandise in Bonded Warehouse Foreign Trade Zone (06 Entries) Trade Agreements (GSP, CBI, etc.) Additional Sampling Issues (non-classification-related)	The absolute value of systemic errors cannot exceed 1 percent of the value for the review area. This is for the review area such as GSP, not for a smaller test area such as GSP from one country or one manufacturer.	Dollars Compliant ≥ 99%	Compliance Acceptable
		Dollars Compliant < 99%	Compliance Unacceptable
Computed Value	Total absolute value variance (resulting from systemic errors) between company declared value and audit value cannot exceed 1 percent of total actual computed value.	Dollars Compliant ≥ 99%	Compliance Acceptable
		Dollars Compliant < 99%	Compliance Unacceptable
ADD/CVD (Declared on 03 and 07 entries)	The absolute value of duty variances resulting from systemic errors cannot exceed 1 percent of the total ADD/CVD tested.	Dollars Compliant ≥ 99%	Compliance Acceptable
		Dollars Compliant < 99%	Compliance Unacceptable
Undeclared ADD/CVD Transshipment	No compliance rate. All systemic errors are material.		

Systemic Errors

Q. What are systemic errors?

A. Systemic errors are caused by a breakdown in a system. If the system is corrected, the errors would not reoccur. To consider an error or errors systemic, you have to be able to identify the system failure that caused the problem or identify a control that would correct or alleviate the problem. Generally, if you cannot identify the system that broke down or a reasonable change in the system that would remedy the problem, you do not have a systemic problem.

For example, assume that in situation x you find 3 clerical errors in your sample of 100:

a. One of the errors was caused by Big Broker, who copied an invoice quantity incorrectly. Even though the importer reviewed a substantial sample of the broker's work and compared the amounts on Customs entries to accounting records, the importer did not catch the error.
b. One of the errors was caused by a receiving clerk writing down the wrong quantity.
c. One was due to an error by the accounting department in recording the quantity into inventory records.

Each of these errors had a different cause, and there is no pattern. It would be difficult to imagine a reasonable system correction that would prevent these errors from occurring in the future.

Compare the situation in X with that in situation Y, where you found 8 clerical errors out of 100, all caused by the same broker. The importer had no system for reviewing the broker's work and did not compare Customs entries to quantities in company records. In this case, creation of a system to review the accuracy of Customs entries would be a reasonable recommendation.